IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 719 of 2005
To
FIRST APPEAL No. 721 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI MAGANBHAI PATEL DECD. THRO' LRS - Appellant(s)
Versus
SPECIAL LAQ OFFICER & 1 - Defendant(s)

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Appearance :
MR ANUP PARASRAMPURIA for MR JAYESH M PATEL for Appellant(s) : 1,
MR UDAY BHATT A.G.P. for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 01/02/2007

ORAL COMMON JUDGMENT

1. These three appeals arise from the common judgment and award made by 3rd Joint Civil Judge [S.D.],

Nadiad dated 31st March, 2004 in Land Acquisition Case Nos. 332/1998, 333/1998 and 334/1998. Since these appeals involve common questions of fact and law, they are heard together and now they are being disposed of by this common judgment.

2. The lands in question are agricultural lands [the “land” for short] and they are situated at village Vasna-Maragiya, Taluka Mehmadabad, District Kaira. Since respondent no. 2 needed the land for public purpose namely, drilling oil wells, the General Manager i.e., respondent no. 2 submitted a proposal for temporary occupation of the land. Since it appeared to the appropriate Government that the land was needed for public purpose, the proposal was accepted by it and in pursuance thereof, it exercised powers under Section 35 (1) of the Land Acquisition Act, 1894 [hereinafter referred to as the “Act”]. After complying with the necessary formalities the Collector procured the occupation of the land on 17th May, 1993. Respondent no. 1 determined the compensation at the rate of Rs.2=00 per sq. mtr., per annum by his award dated 16th October, 1997. The demand of the appellant was of Rs.7=00 per sq. mtr., per annum. Since there was difference in the rate of compensation, Reference under Section 35 (3) of the Act

was made to the Court for its decision. The proceedings were numbered as LAQ Nos. 332/1998, 333/1998 and 334/1998. During the course of hearing, the parties produced evidence. The appellants examined Kamleshbhai Ishwarbhai Patel who is the owner of the land bearing survey no. 195 and also produced documentary evidence in the form of Extracts of Revenue records and previous judgments of the same Court in respect of land of village Sarsa itself which were acquired for this very purpose. As against that respondent no. 2 examined Ibrahimbhai Mohmmadbhai whose evidence is at Exh. 24. Before the Court the appellants enhanced the claim to Rs.7=00. They claimed enhancement on the ground that the compensation awarded by respondent no. 1 was on lower side. According to them, village Vasna-Margiya had all the basic amenities and facilities like road, water supply, hospital, school etc. As against that the case of respondent no. 2 was that the compensation determined by respondent no. 1 was just and proper.

3. At the end of the proceedings, the learned Judge arrived at a conclusion that the compensation awarded by respondent no. 1 was inadequate and it was required to be enhanced. The Court granted additional compensation at the rate of Rs.2.75 paise per sq. mtr., per annum. It also directed the respondents to pay enhanced compensation

from the date of the compensation till realization together with interest at the rate of 9% from the date of the award till realization and also the proportionate costs. Since the appellants are not satisfied with the compensation awarded by the Court they have preferred these appeals.

4. I have heard learned advocate Mr. Anup Parasrampuria for Mr. Jayesh Patel learned advocate appearing for the appellants, Mr. Uday Bhatt learned A.G.P., for respondent no. 1 and Mr. Ajay Mehta learned advocate for respondent no. 2. It is submitted by Mr. Parasrampuria that considering the fact that village Vasna-Maragiya is having considerable development and the agricultural lands are fertile lands, the Court ought to have granted full compensation as claimed by the appellants. He has submitted that the land is irrigated land and they obtained valuable crops like paddy, wheat etc., all round the year and earned about Rs.7,500=00 net after deduction of the expenses. He has, therefore, submitted that the appellants deserve to receive compensation at the rate of Rs.7=00 per sq. mtr., per annum. He has also placed reliance on the judgment of the Civil Court, Nadiad rendered in LAQ case no. 98/2001 and 99/2001, which is at Exh. 27. As against that Mr. Ajay Mehta learned advocate for respondent no. 2 – ONGC has

submitted that this is merely temporary occupation and the Reference Court had no authority to award the compensation beyond the period of three years from the date of occupation. He has submitted that the rate of compensation determined by the Civil Court is just and proper. Mr. Bhatt learned A.G.P., has adopted the submissions of Mr. Mehta.

5. Having carefully considered the submissions made by the learned advocates for the parties and also having closely perused the record and proceedings of the case, it appears that there is no dispute with regard to temporary occupation of the land. There is also no dispute that the occupation was made on 17th May, 1993 and till this date it has been retained by respondent no. 2. The only questions that are required to be considered are whether the compensation awarded by the Civil Court is adequate and whether the Court has power to award compensation beyond the period of three years from the date of the occupation.

6. First, I will deal with the question with regard to adequacy of compensation. Before respondent no. 1, the claim of the appellants was of Rs.4.75 paise per sq. mtr., per annum. However, respondent no. 1 on the basis

of the material collected by him thought it fit to grant the compensation at the rate of Rs.1.80 paise per sq. mtr., per annum. Before the Civil Court in Reference under Section 35(3) of the Act, the appellants examined Kamleshbhai Ishwarbhai, who has deposed that village Vasna-Maragiya had all the basic facilities like road, light, water supply, telephone, high-school, hospital etc. It is situated near National Highway. It also has transport services to connect it with other places. According to him, the land is fertile and irrigated. They have facilities of irrigation from tube well as well as water canal. He has produced the judgment delivered in respect of agricultural lands situated at village Sarsa itself and it was occupied by respondent no. 2 since 25th November, 1993. In the said proceedings, the Court found that the claimant of that case was entitled to receive Rs.6.80 paise per sq. mtr., per annum for temporary occupation of the land. However, the Court awarded Rs.5=00 per sq. mtr., per annum, since the claim of the appellants was of Rs.5=00 per sq. mtr., per annum. The said judgment is taken in evidence and it is exhibited as Exh. 18. In that case the reasoning of the learned Judge is that considering the previous acquisition made by respondent no. 2 and the date of the acquisition of the case before her, there was a difference of seven years

and, therefore, the learned Judge applied the principe of 10% annual increase and decided that though the claimants of the case before her were entitled to receive Rs.6.58 paise per sq. mtr., per annum, the compensation was restricted to Rs.5=00 per sq. mtr., per annum, since that was the claim made in the Reference before the Court. The reasoning of the learned Judge does not appear to be proper. It is a settled proposition of law that annual 10% increase applies only in the case of permanent acquisition and not in the case of temporary occupation under Section 35 of the Act. However, considering the fact that village Vasna-Maragiya is having all the modern basic facilities, and there is no serious challenge to the evidence of Kamleshbhai Ishwarbhai the compensation awarded by the Court in the present case is slightly on lower side and it is required to be enhanced by Rs.0.25 paise per sq., mtr., per annum. In other words, the compensation of Rs.5=00 per sq. mtr., per annum can be just and proper compensation and, therefore, I decide that the appellants are entitled to receive compensation at the rate of Rs.5=00 per sq., mtr., per annum.

7. The second question is whether the Court can award the compensation beyond the period of three years from the date of the occupation. This submission is made

by Mr. Mehta. Though no appeal is preferred by respondent no. 2 nor any cross objections have been filed by it, since this is a pure question of law, the learned advocate is permitted to agitate it before this Court. This Court in a recent decision rendered in the case of Patel Sambhubhai Bhaichanddas v. State of Gujarat and Ors., rendered in First Appeal No. 2568 of 1999 and its allied matters, dated 27th December, 2006 has held as under:

> "10.1. Considering the provisions of Section 35 (1) of the Act, the occupant is not authorized to retain the possession of the land beyond the maximum period of three years, unless fresh procedure, as prescribed under Section 35 (2) is followed or parties have arrived at consensus for retention of the possession by the occupant beyond three years. So far as the facts of the case on hand are concerned, the possession of ONGC cannot be termed as unauthorized, illegal and wrongful because of the implied consent of the appellants. Since the Collector under Sections 35 and 36(1) of the Act is required to exercise power in relation to occupation of land for maximum period of three years, he cannot refer the difference as to the sufficiency of the compensation for the period subsequent to expiration of the term agreed upon by the parties or the maximum period of three years. The Court in its decision cannot cover any period subsequent to the expiration of the agreed term or three years. Such decision to that extent cannot be said to be legal and in accordance with the provisions of Chapter VI. It is immaterial whether the Reference is made within stipulated period or afterwards. Further when the Collector fails to act in accordance with the provisions of Section 36 (2) of the Act, on expiration of the maximum period of three years, the person interested in the land has to resort to remedy provided under common law, since the act is totally silent on this

> aspect. Even for claiming mesne profits in appropriate case, such person has to take recourse to remedy under common law when the possession of the land in question is stated to be unauthorized or wrongful. So far as the present case is concerned, in view of the fact that the possession is not unauthorized, the appellants are not entitled to receive any mesne profits. However, the appellants are entitled to have additional compensation for a period of three years commencing from the date of occupation at the rate of Rs.0.50 paise per sq. mtr. For the period beyond three years, if the appellants want additional compensation, they have to approach the Civil Court under common law as subsequent retention of possession is on account of consensus arrived at amongst the parties which is contractual arrangement and not under the Act. Of-course, if parties so intend, it is open for them to take the decision of the Court as a guideline or as basis for determining the rent for further period."

8. In view of the same, the Court has no jurisdiction to give its decision regarding compensation under Section 35 (3) of the Act beyond the period of three years. The appellants will therefore, be entitled to receive compensation determined by the Court only for a period of three years from the date of occupation together with rate of interest and costs as awarded by the Reference Court. In view of the same, these appeals are partly allowed.

R & P to be re-transmitted to the Reference Court forthwith.

[Akshay H. Mehta, J.]

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